

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 441

BY SENATORS TARR AND CHAPMAN

[Introduced January 23, 2023; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-10-17 of the Code of West Virginia, 1931, as amended, relating
2 to removing the additional one and one-half percent interest rate for tax underpayments;
3 and specifying an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-17. Interest.

1 (a) *Underpayments.* — If any amount of a tax administered under this article is not paid
2 on or before the last date prescribed for payment, interest on the amount at the rate of eight
3 percent per annum shall be paid for the period from the last date to the date paid: *Provided*, That
4 on and after July 1, 1986, interest on underpayments shall be paid at the annual rate established
5 under §11-10-17a of this code, from the period beginning on July 1, or from the last day prescribed
6 for payment, whichever is the later, to the date paid, regardless of when liability for the tax arose.
7 ~~Provided, however, That on and after July 1, 2002, interest on underpayments shall be paid at an~~
8 ~~annual rate of one and one-half percent above the annual rate established under section~~
9 ~~seventeen-a of this article, from the period beginning on July 1, or from the last day prescribed~~
10 ~~for payment, whichever is the later, to the date paid, regardless of when liability for the tax arose~~
11 For purposes of this subsection, the last date prescribed for payment shall be the due date of the
12 return and shall be determined without regard to any extension of time for payment.

13 (b) *Last date for payment not otherwise prescribed.* — In the case of taxes payable by
14 stamp or other indicia of tax payment and in all other cases in which the last day for payment is
15 not otherwise prescribed, the last date for payment shall be considered to be the date the liability
16 for tax arises and in no event ~~shall~~ may be later than the date notice and demand for payment of
17 the tax is made by the Tax Commissioner.

18 (c) *Erroneous refund or credit.* — If any refund is made or credit is established upon an
19 erroneous claim for refund or credit, interest on the amount refunded or credited at the annual

20 rate established under §11-10-17a of this code, shall be paid by the claimant from the date the
21 refund was made or the credit was taken to the date the amount is recovered.

22 (d) *Overpayments.* — Interest shall be allowed and paid at the annual rate of eight percent
23 per annum upon any amount which has been finally administratively or judicially determined to be
24 an overpayment in respect of each tax administered under this article except the taxes imposed
25 by §11-12-1 *et seq.*, §11-14-1 *et seq.*, and §11-14A-1 *et seq.* of this code: *Provided*, That on and
26 after July 1, 1986, interest on overpayments shall be paid at the annual rate established under
27 §11-10-17a of this code, from July 1, or the date the claim for refund or credit is filed, whichever
28 is the later, regardless of when the tax was paid. The interest shall be allowed and paid for the
29 period commencing with the date of the filing by the taxpayer of a claim for refund or credit with
30 the Tax Commissioner and ending with the date of a final administrative or judicial determination
31 of overpayment. The Tax Commissioner shall, within 30 days after the determination of
32 entitlement to refund, issue his or her requisition or establish a credit as requested by the
33 taxpayer. Whenever the Tax Commissioner fails or refuses to issue any requisition or establish
34 the credit within said 30-day period, the interest provided herein shall commence to accrue until
35 performance by the Tax Commissioner. The acceptance of the refund check or credit shall be
36 without prejudice to any right of the taxpayer to claim any additional overpayment and interest
37 thereon.

38 (e) *Applicable rules.* — For purposes of this section:

39 (1) *No interest payable on tax refunded or credited within ninety days after claim for refund*
40 *or credit is filed.* — In the event of the overpayment of any tax administered under this article,
41 except the tax imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code, where the Tax
42 Commissioner issues his or her requisition or establishes a credit as requested by the taxpayer
43 within 90 days after the date of the filing by the taxpayer of a claim for refund or credit, no interest
44 shall be allowed under this section.

45 (2) *No interest payable where personal income tax and corporation net income tax*
46 *refunded or credited within six months after claim for refund or credit is filed.* — In the event of
47 the overpayment of the tax imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code, where
48 the Tax Commissioner issues his or her requisition or establishes a credit as requested by the
49 taxpayer within six months after the date of the filing by the taxpayer of a claim for refund or credit,
50 no interest shall be allowed under this section.

51 (3) *Interest treated as tax.* — Interest prescribed under this section on any tax shall be
52 collected and paid in the same manner as taxes.

53 (4) *No interest on interest.* — No interest under this section ~~shall~~ may be imposed on the
54 interest provided by this section prior to July 1, 1986.

55 (5) *Interest on penalties or additions to tax.* — Interest shall be imposed under subsection
56 (a) of this section on any assessable penalty or additions to tax only if the penalty or additions to
57 tax is not paid within 15 days from the date of notice and demand therefor, and in that case,
58 interest shall be imposed only for the period from the date of the notice and demand to the date
59 of payment.

60 (6) *Payments made within 15 days after notice and demand.* — If notice and demand is
61 made for payment of any amount, and if the amount is paid within 15 days after the date of the
62 notice and demand, interest under this section on the amount so paid may not be imposed for the
63 period after the date of the notice and demand.

64 (7) *Limitation on collection.* — Interest prescribed under this section on any tax may be
65 collected at any time during the period within which the tax to which the interest relates may be
66 collected.

67 (8) *Exception as to estimated tax.* — This section does not apply to any failure to pay any
68 estimated tax required to be paid under §11-13-1 *et seq.*, §11-13A-1 *et seq.*, §11-13B-1 *et seq.*,
69 §11-21-1 *et seq.*, §11-23-1 *et seq.*, or §11-24-1 *et seq.* of this code.

70 (9) *Effective date.* — Changes made to this section during the 2023 Legislative Session
71 shall be effective after December 31, 2023.